

HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASTE ACTION PROJECT,

Plaintiff,

v.

ASTRO AUTO WRECKING, LLC,

Defendant.

No. 2:15-cv-00796-JCC

~~PROPOSED~~ PRETRIAL ORDER

JURISDICTION

Federal jurisdiction is vested under 28 U.S.C. § 1331 (Federal Question) and 33 U.S.C. § 1365(a) (Clean Water Act ("CWA") citizen suit provision).

CLAIMS AND DEFENSES

Waste Action Project ("WAP") will pursue the following claim:

1. Defendant Astro Auto Wrecking LLC ("Astro Auto" or "Astro") is in violation of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342, for failing to comply with the terms and conditions of its National Pollutant Discharge Elimination System ("NPDES")

[PROPOSED] PRETRIAL ORDER - 1
No. 2:15-cv-00796-JCC

SMITH & LOWNEY, PLLC
2317 EAST JOHN STREET
SEATTLE, WASHINGTON 98112
(206) 860-2883

1 permits. Waste Action Project will ask the Court to determine civil penalties and appropriate
2 injunctive relief for Defendant's CWA violations.¹

3 Astro Auto Wrecking will pursue the following affirmative defenses and/or claims:

- 4 1. If any Clean Water Act violation occurred in the past, it is not ongoing and
5 therefore cannot support any claims;
- 6 2. Astro's actions are in compliance with all applicable local and federal statutes;
- 7 3. Permit shield defense - Astro has a valid NPDES permit and is therefore shielded
8 from liability;
- 9 4. Any evidence of improper discharges is due to errors in the collection of said
10 data;
- 11 5. The alleged improper discharge, if any, is due to single operational upset limiting
12 any possible penalties;
- 13 6. Astro's activities on its property do not require an NPDES permit.
- 14 7. Under 33 U.S.C. §1319(d) mitigating factors are applicable that reduce or
15 eliminate any penalty that should be imposed against Defendant for alleged violations.

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19 ADMITTED FACTS

20 The following facts are admitted by the parties:

- 21 1. Astro Auto operates a 5.15 acre auto wrecking, recycling, and storage facility in
22 Western Washington, at 37307 Enchanted Parkway South, near Federal Way, 98003 (the
23 "Facility").
- 24 2. Astro Auto has operated the Facility since about 2000.

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28 ¹ Plaintiff also seeks recovery of litigation expenses as authorized by 33 U.S.C. § 1365, and anticipates that this
29 issue will be addressed in supplemental proceedings following trial.

1 3. At the Facility, Astro Auto engages in activities including auto wrecking and
2 recycling. As part of its typical activities, Astro processes, dismantles, drains, stores, and crushes
3 vehicles.

4 4. The Facility is open eight hours per day, six days per week.

5 5. The Facility comprises a shop with indoor repair areas and two roofed but open
6 air vehicle bays, a mobile outdoor car crusher, auto fluid storage areas, scrap piles, and vehicle
7 storage. The entry to the facility is paved with asphalt, and the roofed vehicle bays are concrete.
8 The other outdoor areas of the Facility are bare soil that is partially covered by quarry spalls.
9

10 6. The Facility's western property line runs along the top of a ravine. Hylebos
11 Creek, which lies to the west of the Facility, is a tributary to the Hylebos Waterway and
12 Commencement Bay.
13

14 7. King County Department of Parks, Planning, and Resources lists the East Fork
15 Hylebos Creek (tributary 0006 of the Hylebos Creek system) as a class 2 stream with salmonids
16 in its perennial, downstream reach. Salmonids listed as inhabiting the East Fork Hylebos Creek
17 include coho salmon (*Oncorhynchus kisutch*), chum salmon (*Oncorhynchus keta*), and cutthroat
18 trout (*Oncorhynchus clarki*).
19

20 8. The East Fork of Hylebos Creek is listed as impaired for copper, bacteria, and
21 dissolved oxygen under section 303(d) of the Clean Water Act. The copper and bacteria listings
22 are in Category 5, the most advanced classification, indicating that data show violations of the
23 relevant state water quality standard that must be addressed with a total maximum daily load
24 ("TMDL") specification or a water quality improvement project. *Defendant contends this is*
25 *irrelevant.*
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1 9. The Washington Department of Ecology ("Ecology") granted Astro Auto
2 coverage under the Washington Industrial Stormwater General Permit ("ISGP") for discharges of
3 stormwater associated with industrial activity from the Facility (NPDES Permit No.
4 WAR011869) effective May 21, 2010.

5 10. The effective NPDES permit for Astro Auto's stormwater discharges from the
6 Facility from May 21, 2010 through January 1, 2015 was the Washington Industrial Stormwater
7 General Permit, issued October 21, 2009, which became effective on January 1, 2010 ("2010
8 General Permit").

9 11. NPDES permit WAR011869 imposes an effluent limit of 2.7 µg/L copper on
10 Astro Auto's discharges. Astro Auto must sample its discharges and analyze them for copper
11 according to its Permits.

12 12. Ecology issued the current Washington Industrial Stormwater General Permit on
13 December 3, 2014, which became effective on January 2, 2015 ("2015 General Permit").

14 13. Astro Auto submitted an application to Ecology seeking coverage under the 2015
15 General Permit for discharges of stormwater from the Facility on or about December 30, 2014.

16 14. Ecology granted Astro Auto coverage under the 2015 General Permit for
17 discharges of stormwater at the Facility effective January 2, 2015 under NPDES Permit No.
18 WAR011869.

19 15. Astro Auto completed its first stormwater pollution prevention plan ("SWPPP")
20 in April, 2011. The April, 2011 SWPPP was the effective SWPPP for the Facility until it was
21 replaced by a SWPPP dated May 2015. The May, 2015 SWPPP has been the effective SWPPP
22 for the Facility since that date.

23 16. The statute of limitations in this case extends to March 22, 2010.

1 17. Waste Action Project satisfied the CWA's pre-suit notice of intent to sue
2 requirement to maintain this case.

3 18. Waste Action Project issued the letter attached to its Complaint as Exhibit 1 to
4 Astro Auto's managing agent and registered agent on March 11, 2015 by certified mail through
5 the United States Postal Service, postage pre-paid.
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7 19. Waste Action Project issued the letter attached to its Complaint as Exhibit 1 to
8 Gina McCarthy, Administrator U.S. Environmental Protection Agency; Dennis J. McLerran,
9 Regional Administrator U.S. Environmental Protection Agency, Region 10; and Maia Bellon,
10 Director Washington State Department of Ecology, on March 11, 2015 by certified mail through
11 the United States Postal Service, postage pre-paid.
12

13 20. Astro Auto was served through its authorized agent with a copy of the Complaint
14 and a summons prior to May 30, 2015.

15 21. Waste Action Project issued a copy of its Complaint in this matter, via the United
16 States Postal Service, certified mail with return receipt requested, postage pre-paid to Gina
17 McCarthy, Administrator U.S. Environmental Protection Agency; Dennis J. McLerran, Regional
18 Administrator U.S. Environmental Protection Agency, Region 10; and Citizen Suit Coordinator,
19 Environmental & Natural Resources Division, Law & Policy Section of the U.S. Department of
20 Justice, on May 11, 2015.
21

22 22. No government agency has diligently prosecuted Defendant under 33 U.S.C. §
23 1319 or comparable state law for the violations alleged in the Complaint in this matter.
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25 23. Waste Action Project has standing to maintain this lawsuit.
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1 24. Astro Auto's failure to implement secondary containment for fluid storage, a
2 stormwater recycling system, and keeping hoods closed on stored junk vehicles constitute
3 violations of the CWA.

4 25. Astro Auto's failure to implement secondary containment for fluid storage from
5 March 18, 2015 to December 6, 2016, or 630 days constitutes a violation of the CWA.
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7 26. Astro Auto's failure to implement a stormwater recycling system from October
8 31, 2015 to December 6, 2016, or 403 days constitutes a violation of the CWA.

9 27. Astro Auto's failure to keep the hoods closed on stored junk vehicles since
10 September 1, 2015 to December 6, 2016, or 463 days constitutes a violation of the CWA.
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12 28. Astro Auto has collected and analyzed two stormwater samples from the Facility
13 as reported in the Discharge Monitoring Reports ("DMRs") it submitted to Ecology.

14 30. Astro Auto violated the CWA by failing to collect and report stormwater
15 discharge sample results in the first and fourth quarters of 2015 and the first quarter of 2016.
16

17 31. Astro Auto violated the CWA by failing to submit annual stormwater reports for
18 2011 and 2014 as required by the General Permit.

19 32. The following injunctive relief is economically and technically feasible for Astro
20 Auto, in the public interest, appropriate to remedy any Clean Water Action violations Waste
21 Action Project alleges considering the balance of hardships between the parties, and within the
22 Court's statutory authority to fashion an appropriate equitable remedy under 33 U.S.C. §§
23 1365(a) and (f):
24

25 a. Astro Auto will comply with the CWA as it relates to discharges of industrial
26 stormwater from the Facility, all conditions of the ISGP and any successor, modified, or
27 replacement NPDES permit. However, nothing in this stipulation para. 32 shall be construed to
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1 (i) allow WAP to prosecute allegations of a separate CWA violation as a violation of the
2 injunctive relief in this subparagraph 32(a); or (ii) prejudice WAP in any separate prosecution of
3 allegations of separate CWA violations at the Facility;

4 b. Not later than March 31, 2018, Astro Auto will install (i) an impervious concrete
5 pad surrounded by a concrete berm for areas where vehicles are processed and/or drained of
6 fluids; (ii) an impervious concrete pad surrounded by a concrete berm for the car crushing area;
7 and (iii) an oil/water separator consistent with the design prepared for Astro Auto by Land
8 Technologies dated April 15, 2011 and stamped by registered engineer Paul Musante;

9 c. Unless stormwater infiltration proves "*Complicated*" due to soil contamination or
10 groundwater, as that term is defined in subparagraph (d-ii) of this stipulation para. 32, Astro
11 Auto will, not later than March 31, 2019, complete installation of stormwater collection,
12 conveyance, and infiltration devices, including a properly engineered infiltration bay, all
13 consistent with the design prepared for Astro Auto by Land Technologies dated April 15, 2011
14 and stamped by registered engineer Paul Musante;

15 d. Not later than October 31, 2018, Astro Auto will complete the following testing:

16 (i) collect at least eight (8) soil samples from the upper six inches of soil in the area
17 Astro Auto plans to excavate as part of construction of the infiltration bay described in
18 subparagraph (c.) of this stipulation. The eight sample locations will be distributed across the
19 area so as to be representative. Astro Auto may composite the eight samples into no fewer than
20 two samples for laboratory analysis. Astro Auto will have such samples analyzed for pH,
21 conductivity, and the metals, organics, and petroleum hydrocarbons listed in Table 8 of condition
22 S6.C.2.e. of the 2015 General Permit. The analysis will be capable of detecting whether the
23 foregoing pollutants exceed the quantitation levels in Table 8 of the NPDES permit;

1 (ii.) Stormwater infiltration is considered "***Complicated***" for the purposes of this
2 stipulation if (1) any soil sample collected pursuant to subparagraph (d-i) of this stipulation para.
3 32 exceeds 2015 General Permit thresholds; or (2) groundwater is encountered in the area where
4 Astro Auto plans to construct infiltration facilities;

5 (iii.) If stormwater infiltration at the Facility proves to be Complicated, Astro Auto will
6 notify WAP within fourteen (14) days of receipt of the report or discovery of groundwater that
7 triggers this condition and, within 90 days of providing such notice, will propose and provide to
8 WAP an alternative stormwater treatment system approved by a qualified stormwater
9 professional that will comply with all applicable NPDES permit requirements. Upon joint
10 approval of an alternative treatment system, Astro Auto will install that system no later than May
11 17, 2019, or, upon joint approval of an alternative infiltration location, Astro Auto will
12 implement the infiltration facilities at the approved location not later than May 17, 2019;

13 e. Following each completion date listed in this section, Astro Auto will permit will
14 permit Waste Action Project to enter the Facility to verify completion of any of the tasks listed in
15 subparagraphs (a) through (d) of this stipulation para. 32, provided that Waste Action Project
16 provides a minimum of seven (7) days' written notice of said visit and a mutually agreed time for
17 said visit can be established;

18 f. Within six (6) months of completing the tasks listed in subparagraphs (b) and (c)
19 of this stipulation 32 (and (d) if it becomes applicable), Astro Auto will complete an updated
20 SWPPP and transmit a copy to Waste Action Project.
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ISSUES OF LAW

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2 1. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
3 U.S.C. §§ 1311(a) and 1342, for discharging in excess of the copper effluent limit in its NPDES
4 permit.

5 2. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
6 U.S.C. §§ 1311(a) and 1342, and its NPDES permit for failing to implement the following
7 BMPs: bermed concrete containment pad for the vehicle crusher, cover and containment for
8 waste and scrap piles, grading and containment pads to reduce pollutant exposure, and
9 contaminated stormwater conveyance and treatment BMPs.
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11 3. What are the maximum penalties that can be assessed against Defendant?
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13 4. Should the penalties imposed on Defendant be reduced from the maximum
14 penalty based upon the application of the statutory penalty factors of 33 U.S.C. § 1319(d), and if
15 so by how much?
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17 5. What injunctive relief, if any, is warranted by the Court's findings?

18 6. Is Waste Action Project a substantially prevailing party entitled to recovery of
19 costs of litigation under 33 U.S.C. § 1365(d)?
20

21 **Additional issues of law proposed by Plaintiff only:**

22 7. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
23 U.S.C. §§ 1311(a) and 1342, and its NPDES permit for failing to implement all known available
24 and reasonable methods of pollution prevention and control (AKART).
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26 8. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
27 U.S.C. §§ 1311(a) and 1342, and its NPDES permit because its SWPPP is deficient.
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1 9. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
2 U.S.C. §§ 1311(a) and 1342, and its NPDES permit for failing to collect and report stormwater
3 sample results for nineteen quarters.

4 10. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
5 U.S.C. §§ 1311(a) and 1342, and its NPDES permit for failing to submit a complete and accurate
6 annual report for 2015.

7 11. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
8 U.S.C. §§ 1311(a) and 1342, and its NPDES permit for failing to complete a Level 1 corrective
9 action for oil sheen for fourth quarter 2015.

10 12. Whether Astro Auto is in violation of sections 301(a) and 402 of the CWA, 33
11 U.S.C. §§ 1311(a) and 1342, and its NPDES permit for failing to record information and retain
12 records as required by its NPDES permits.

13 **Additional issues of law proposed by Defendant only:**

14 13. Are any alleged violations of the CWA ongoing or have they occurred solely in
15 the past so as to not be actionable?

16 14. Is an NPDES permit required or proper for the Facility?

17 15. Does the “permit shield” defense apply?

18 16. Does Plaintiff have any actual evidence of current discharges in excess of the
19 allowable limitations?

20 17. Was the alleged “discharge” a single operational upset so as to limit any available
21 penalties?

22 18. Such other and further issues of law as may become appropriate as the evidence is
23 presented.

EXPERT WITNESSES

(a) Each party will be limited to ____ expert witness(es) on the issues of liability and remedies.

(b) The names and addresses of the expert witnesses to be used by each party at the trial and the issue upon which each will testify is:

(1) On behalf of Plaintiff, Richard Horner, 230 N.W. 55th Street, Seattle, WA 98107, will testify on issues related to the Facility's violations of the CWA and its NPDES permits, injunctive relief, and the CWA penalty factors (33 U.S.C. § 1319(d));

(2) On behalf of Defendant, Steven Neugebauer, SNR Company, 15211 3rd Place NE, Duvall, Washington 98019, Phone: (425) 788-3015. Mr. Neugebauer is the Principal Hydrogeologist/Engineering Geologist of SNR Company. He may be called to testify regarding his expert opinion of Astro's alleged discharges and compliance with the CWA and/or rebut any such testimony put on by WAP's experts.

Rone Brewer, Sound Ecological Endeavors, 19325 32nd Ave N.W., Stanwood, Washington 98292, Phone: (206) 595-7481. Mr. Brewer may be called to testify regarding his observations and expert opinion of Astro's alleged discharges and compliance with the CWA and/or rebut any such testimony put on by WAP's experts.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Plaintiff:

1. Greg Wingard, c/o Smith & Lowney PLLC, 2317 East John Street, Seattle, Washington 98112, Phone: (206) 860-2883, will testify on issues related to Waste Action

1 Project's standing, the Facility, and the application of the CWA penalty factors (33 U.S.C. §
2 1319(d)) to Astro Auto;

3 2. Plaintiff is filing designated deposition transcript testimony in lieu of calling Leo
4 McMilian, Astro Auto Wrecking, to testify on issues related to the Facility's violations of the
5 CWA and its NPDES permits, injunctive relief, and the CWA penalty factors (33 U.S.C. §
6 1319(d));
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8 3. Cynthia Hickey, Source Control Program Manager, King County Stormwater
9 Services, 201 S. Jackson St., Suite 600, Seattle, WA 98104, (206) 477-4710, will testify on
10 issues related to Astro Auto's violations of the CWA and its NPDES Permits, injunctive relief,
11 and the CWA penalty factors (33 U.S.C. § 1319(d)).
12

13 4. Victor Young, c/o Smith & Lowney PLLC, 2317 East John Street, Seattle,
14 Washington 98112, Phone: (206) 860-2883, may testify on issues related to Astro Auto's
15 violations of the CWA and its NPDES Permits, and the CWA penalty factors (33 U.S.C. §
16 1319(d)).
17

18 5. Paul Stasch, Washington Department of Ecology Inspector, 300 Desmond Drive
19 Lacey, WA 98503, (360) 407-6273, may testify on issues related to Astro Auto's violations of
20 the CWA and its NPDES Permits, injunctive relief, and the CWA penalty factors (33 U.S.C. §
21 1319(d));
22

23 (b) On behalf of Defendant:

24 1. Leo McMilian, c/o Romero Park P.S. 155 – 108th Avenue NE, Suite 202
25 Bellevue, WA 98004, 425-450-5000. Mr. McMilian, owner of Astro, will testify regarding the
26 operations of the business, its NPDES permit, and its compliance with the NPDES permit.
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2. Rone Brewer, Sound Ecological Endeavors, 19325 32nd Ave N.W., Stanwood, Washington 98292, Phone: (206) 595-7481. Mr. Brewer may be called to testify regarding his observations of Astro's alleged discharges and compliance with the CWA

3. Defendant reserves the right to call any witnesses listed by Plaintiff in the event Plaintiff does not call them.

EXHIBITS

(a) Admissibility stipulated:

Plaintiff's Exhibits

- #1 Notice of Intent to Sue letter from Waste Action Project to Astro Auto dated March 11, 2015
- #2 2010 Washington Industrial Stormwater General Permit
- #3 2015 Washington Industrial Stormwater General Permit
- #4 2012 Stormwater Management Manual for Western Washington, as Amended December 2014 [excerpt]
- #5 Land Technologies Conceptual Infiltration Stormwater Management Plan for Astro Auto Recycling 37307 Enchanted Pkwy S., pages D-1 and D-2 (April 15, 2011)
- #6 Astro Auto 2015 Stormwater Pollution Prevention Plan (May 2015)
- #7 Astro Auto 2011 Stormwater Pollution Prevention Plan (April 2011)
- #8 Richard Horner, Photographs from September 1, 2015 Site visit to Astro Auto
- #9 Astro Auto Discharge Monitoring Report, Third Quarter 2010
- #10 Astro Auto Discharge Monitoring Report, Fourth Quarter 2010
- #11 Astro Auto Discharge Monitoring Report, First Quarter 2011
- #12 Astro Auto Discharge Monitoring Report, Second Quarter 2011
- #13 Astro Auto Discharge Monitoring Report, Third Quarter 2011

- 1 #14 Astro Auto Discharge Monitoring Report, Fourth Quarter 2011
- 2 #15 Astro Auto Discharge Monitoring Report, First Quarter 2012
- 3 #16 Astro Auto Discharge Monitoring Report, Second Quarter 2012
- 4 #17 Astro Auto Discharge Monitoring Report, Third Quarter 2012
- 5 #18 Astro Auto Discharge Monitoring Report, Fourth Quarter 2012
- 6 #19 Astro Auto Discharge Monitoring Report, First Quarter 2013
- 7 #20 Astro Auto Discharge Monitoring Report, Second Quarter 2013
- 8 #21 Astro Auto Discharge Monitoring Report, Third Quarter 2013
- 9 #22 Astro Auto Discharge Monitoring Report, Fourth Quarter 2013
- 10 #23 Astro Auto Discharge Monitoring Report, First Quarter 2014
- 11 #24 Astro Auto Discharge Monitoring Report, Second Quarter 2014
- 12 #25 Astro Auto Discharge Monitoring Report, Third Quarter 2014
- 13 #26 Astro Auto Discharge Monitoring Report, Fourth Quarter 2014
- 14 #27 Astro Auto Discharge Monitoring Report, First Quarter 2015
- 15 #28 Astro Auto Discharge Monitoring Report, Second Quarter 2015
- 16 #29 Astro Auto Discharge Monitoring Report, Third Quarter 2015
- 17 #30 Astro Discharge Monitoring Report, Fourth Quarter 2015
- 18 #31 Astro Discharge Monitoring Report, First quarter 2016
- 19 #32 Astro Discharge Monitoring Report, Second Quarter 2016
- 20 #33 Application for General Permit to Discharge Stormwater Associated with
- 21 Industrial Activity (Notice of Intent) (Dec. 19, 2008)
- 22 #34 Notice of Intent Industrial Stormwater General Permit (Application for Coverage
- 23 Under the 2015 General Permit) (Dec. 30, 2014)
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1 Defendant's Exhibits

2 #A-3 E-Z Crusher Operators Manual & Parts Catalog

3 #A-4 Personal Qualifications for Steven F. Neugebauer

4 #A-8 Rone Brewer Curriculum Vitae

5 #A-15 Photos taken during September 1, 2015 site visit

6 (b) Authenticity stipulated, admissibility disputed:

7 Plaintiff's Exhibits

8 #35 2015 Washington Industrial Stormwater General Permit Fact Sheet

9 #36 2011 Vehicle and Metal Recyclers: A Guide for Implementing the Industrial
10 Stormwater General National Pollutant Discharge Elimination System Permit
11 Requirements

12 #37 Economic Impact Analysis, National Pollutant Discharge Elimination System
13 (NPDES) Wastewater Discharge General Permit, Industrial Stormwater General
14 Permit, Ecology (May 2014)

15 #38 King County, East Hylebos Creek 2001 Monitoring Program Final Report

16 #39 Letter from Elliott Zimmermann, Ecology to Astro Auto Wrecking, Re: Hazardous
17 Waste Compliance Inspection (April 14, 2008)

18 #40 Tracie Walter, Ecology, Water Quality Program Corrections Required, Astro Auto
19 (Nov. 26, 2012)

20 #41 Tracie Walter, Ecology, Water Quality Program Corrections Required, Astro Auto
21 (May 8, 2014)

22 #42 Letter from Ken Waldo, Ecology to Astro Auto Wrecking (July 15, 2011) and
23 enclosed Water Compliance Inspection Report

24 #43 Letter from Paul Stasch, Ecology to Astro Auto Wrecking (Mar. 13, 2015) and
25 enclosed Water Compliance Inspection Report

- 1 #44 Letter from Priscilla Tomlinson, Ecology to Leo McMilian, Astro Auto Wrecking,
2 Re: Site Hazard Assessment (Feb. 12, 2016), and Ecology, Site Hazard
3 Assessment Worksheet 1 Summary Score Sheet Astro Auto Wrecking
4 #45 Cynthia Hickey, King County GIS map titled "Astro Auto Discharges" (April
5 2016)
6 #46 Aerial image of the Facility from Google Earth
7 #47 Richard Horner, Pollutant Remediation Investigation Recommended for Astro
8 Auto
9 #48 Ecology's Permit and Reporting Information System (PARIS) database report for
10 Astro Auto's DMRs
11 #49 Letter, Bill Moore, Ecology to Astro Auto, Re: Discharge Monitoring Report for
12 the Second Quarter, 2013 (Oct. 28, 2013)
13 #50 Letter, Bill Moore, Ecology to Astro Auto, Re: 2015 Discharge Monitoring
14 Reports (April 6, 2016)
15 #51 Letter, Bill Moore, Ecology to Astro Auto, Re: 2016 Discharge Monitoring
16 Reports – First Notice (July 15, 2016)
17 #52 Letter, Bill Moore, Ecology to Astro Auto, Re: 2016 Discharge Monitoring
18 Reports (Oct. 4, 2016)
19 #53 Letter, Bill Moore, Ecology to Astro Auto, Re: 2016 Discharge Monitoring
20 Reports (Dec. 1, 2016)
21 #54 Letter, Bill Moore, Ecology to Leo McMilian Astro Auto Wrecking, Re: Coverage
22 Under the Industrial Stormwater General Permit (May 21, 2010).
23 #55 Washington State Water Quality Assessment 303(d)/305(b) Integrated Report,
24 WQ Assessment. Hylebos Creek, E.F. 303(d) listing ID 45361
25 #56 Excerpts of Ecology et al., Pub. Num. 07-10-079, Control of Toxic Chemicals in
26 Puget Sound, Phase 1: Initial Estimate of Loadings (2007)
27
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1 #57 NOAA National Climatic Data Center, Record of Climatological Observations,
2 Seattle Tacoma International Airport weather station, daily summaries, March 1,
3 2010 through Feb. 9, 2017
4

5 Defendant's Exhibits

6 #A-1 Environmental Geologic and Hydrologic Report prepared for Astro by SNR Company
7 dated September 2016
8

9 #A-2 Industrial Stormwater Monthly Inspection Reports for Astro 1/2011-8/2016

10 #A-5 Declaration of Steven F. Neugebauer dated October 16, 2016

11 #A-6 Rule 26(a)(2) Disclosure of Steven Neugebauer

12 #A-7 Expert Disclosure Statement of Rone Brewer

13 #A-9 Videos of the Facility taken by Rone Brewer
14

15 #A-10 Industrial Stormwater General Permit Annual Report Forms
16

17 (c) Authenticity and admissibility disputed:
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19 Plaintiff's Exhibits

20 #58 Test America Analytical Report, Job ID 580-18190-1, for City of Federal Way
21 (March 19, 2010)

22 #59 Ecology, Environmental Report Tracking System ("ERTS") No. 654621

23 #60 Ecology, Environmental Report Tracking System ("ERTS") No. 655634

24 #61 Photographs of the Facility taken by Cynthia Hickey, King County on March 18,
25 2015

26 #62 Photographs of discharges from the Facility taken by Virgil Pacampara, County
27 Drainage Investigator in December 2015
28

- 1 #63 Video of discharges from the Facility taken by Virgil Pacampara, County
2 Drainage Investigator in December 2015
- 3 #64 Video of discharges from the Facility taken by Virgil Pacampara, County
4 Drainage Investigator in December 2015
- 5 #65 Video of discharges from the Facility taken by Virgil Pacampara, County
6 Drainage Investigator in December 2015
- 7 #66 Video of discharges from the Facility taken by Virgil Pacampara, County
8 Drainage Investigator in December 2015
- 9 #67 Video of discharges from the Facility taken by Cynthia Hickey, on November 17,
10 2015
- 11 #68 Video of discharges from the Facility taken by Cynthia Hickey, on November 17,
12 2015
- 13 #69 Photographs of the Facility taken by Victor Young on April, 2016
- 14 #70 Photographs of discharges from the Facility taken by Victor Young on December
15 17, 2015
- 16 #71 Photographs of discharges from the Facility taken by Victor Young on December
17 18, 2015
- 18 #72 Photographs of discharges from the Facility taken by Victor Young on March 1,
19 2016
- 20 #73 Video of discharges from the Facility taken by Victor Young on October 20, 2016
- 21 #74 Video of discharges from the Facility taken by Victor Young on October 20, 2016
- 22 #75 Photographs of the Facility taken by Victor Young on October 20, 2016
- 23 #76 Photographs of the Facility taken by Victor Young on October 16, 2016
- 24 #77 Report of Richard R. Horner, Ph.D. (Declaration)
- 25 #78 Richard R. Horner, Ph.D., Curriculum Vitae (Sept. 23, 2016)
- 26 #79 Richard R. Horner, Ph.D., list of cases in which Dr. Horner presented expert
27 testimony
28

1 #80 Summary table of NOAA National Climatic Data Center, Record of
2 Climatological Observations, Seattle Tacoma International Airport weather station
3 daily summaries precipitation data showing dates and amount of precipitation on
4 days with 0.68 inches or more of precipitation, March 22, 2010 through Feb. 9,
5 2017

6 #81 Summary table of NOAA National Climatic Data Center, Record of
7 Climatological Observations, Seattle Tacoma International Airport weather station
8 daily summaries precipitation data showing number of days per quarter with 0.68
9 inches or more of precipitation, May 21, 2010 through Feb. 9, 2017
10

11 Defendant's Exhibits

12 #A-11 Google Earth map showing geographic area requested for MS4 map of Federal
13 Way area, produced under Bates No. ASTR 000293

14 #A-12 Google Earth map showing berm in July 2014, produced under Bates No.
15 ASTR000295
16

17 #A-13 1898 USGS Topographic map of Tacoma Quadrangle, produced under Bates No.
18 ASTR000294
19

20 #A-14 Astro Financial docs from Jan. 2015-June 2016

21 #A-16 Photos of Facility prior to remedial efforts

22 #A-17 Invoices for removal of buried refuse

23 #A-18 Binder for permit compliance report filing (demonstrative use only)

24 #A-19 Photos of binder used by Defendant for Permit compliance report filing
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ACTION BY THE COURT

(a) This case is scheduled for trial without a jury on February 27, 2017, at 9:30 AM.

(b) Trial briefs shall be submitted to the Court on or before February 22, 2017.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 27 day of Feb, 2017.


The Honorable John C. Coughenour
United States District Judge

FORM APPROVED

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[PROPOSED] PRETRIAL ORDER - 20
No. 2:15-cv-00796-JCC

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